

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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GUIDEONE SPECIALITY MUTUAL  
INSURANCE COMPANY,

v.

ROCK COMMUNITY CHURCH, INC.,  
FAITH MINISTRIES, INC., and  
MARIE PETUELLE CAZI

ORDER ADOPTING  
REPORT AND  
RECOMMENDATION

09CV492

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A P P E A R A N C E S  
HURWITZ & FINE, P.C.  
1300 Liberty Building  
Buffalo, NY 14202  
By: Dan D. Kohane  
Attorneys for GuideOne Specialty Mutual Insurance Company

JOHNSON, Senior District Judge,

Plaintiff, GuideOne Specialty Mutual Line Insurance Company ("GuideOne" or "Plaintiff") commenced this action seeking a declaration that defendants Rock Community Church, Inc. ("Rock") and Faith Ministries, Inc. ("Faith"), violated the terms of insurance policies issued by GuideOne for the premises located at 57-02 Hoffman Drive, Elmhurst, New York, on which both Rock and Faith operated (the "Premises"). On October 27, 2007, Marie Petuelle Cazi ("Cazi") was injured on the Premises and subsequent filed an action in the Supreme Court of Queens County

against Faith. Plaintiff argues that Cazi violated her duty under New York Insurance Law to notify it of her accident “as soon as practicable” and that, consequently, she breached “the terms and conditions of coverage” under the policies. (Complaint ¶ 46-48.) Plaintiff argues that Rock and Faith also failed to provide prompt notice of Cazi’s accident and failed to participate in the subsequent investigation, as required by the policies.

None of the defendants filed a response to the Complaint, nor did any of them respond to Plaintiff’s motion for the entry of default judgment, or the Clerk’s entry of same. On June 29, 2009, the matter was referred to Magistrate Judge Pollak for a Report and Recommendation on Plaintiff’s motion for default judgment. On July 8, 2009, Judge Pollak set the matter for hearing. Defendants did not respond to this notice, and did not appear at the hearing.

Before this Court is the Report and Recommendation of Judge Pollak, dated December 10, 2009 (the “R&R”), regarding the propriety of the declarations sought by Plaintiff. Judge Pollak recommends that this Court grant Plaintiff’s motion for default as to claims one, two, three, five and seven, but deny default judgment as to claims four and eight. (R&R at 12.) Judge Pollak also recommends granting Plaintiff’s request for declaratory relief against Rock and Faith, but not as to defendant Cazi. (R&R at 13-14.) Specifically, Judge Pollak determined that while the policies required notification to the insurer of potential claims against the insured, Plaintiff could not demonstrate how Rock could be held responsible for

notifying it of a lawsuit brought against Faith. Additionally, Judge Pollak determined that there is no support for Plaintiff's argument that Cazi, the injured, had a duty to inform the insurer of her accident on the Premises. Pursuant to Fed. R. Civ. P. 72(b), Plaintiff objected to certain parts of the R&R. In accordance with 28 U.S.C. § 636(b)(1), this Court reviews de novo those portions of the R&R to which Plaintiff objects.

After carefully reviewing plaintiff's specific objections, this Court finds each to be without merit and therefore adopts the R&R in its entirety. The Clerk of the Court is directed to close the case.

SO ORDERED.

DATED: January 29, 2010  
Brooklyn, New York

s/b Judge Johnson  
Sterling Johnson, Jr, U.S.D.J.